

UNITED STATES DEPARTMENT OF TRANSPORTATION  
FEDERAL AVIATION ADMINISTRATION  
WASHINGTON, DC

**In the Matter of: BERTHAN MACAULAY**

FAA Order No. 2003-5

Docket No. CP02SO0029  
DMS No. FAA-2002-12591<sup>1</sup>

Served: May 15, 2003

**ORDER GRANTING REQUEST FOR EXTENSION  
OF TIME TO FILE APPEAL BRIEF AND REVERSING  
FAA ORDER NO. 2003-4<sup>2</sup>**

By order served on May 15, 2003, the Administrator denied Macaulay's request for a 60-day extension of time in which to file his appeal brief in this matter. The Administrator explained that the denial was based upon Macaulay's failure to file a timely notice of appeal. However, after the Administrator's staff mailed FAA Order No. 2003-4 to the parties, the Administrator became aware of the fact that Macaulay indeed had filed a notice of appeal in a timely fashion but the notice had not been placed in the appropriate file. As a result, FAA Order No. 2003-4 is reversed.

As justification for the request for an enlargement of time, Macaulay's attorney represented that her client, who is elderly and has been seriously ill for a long time, has been unable to forward documents that she needs to prepare the appeal brief. In addition, Macaulay's attorney explained, she was preparing a motion to vacate a conviction in a first-degree murder case in which the death penalty had been imposed.

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<sup>1</sup> Materials filed in the FAA Hearing Docket (except for materials filed in security cases) are also available for viewing through the Department of Transportation's Docket Management System (DMS). Access may be obtained through the following Internet address: <http://dms.dot.gov>.

<sup>2</sup> The Administrator's civil penalty decisions, as well as indexes of the decisions, the Rules of Practice in Civil Penalty Actions, and other information, may be accessed via the Internet at the following address: <http://www.faa.gov/agc/cpwebsite>. The decisions have been published by commercial publishers (Hawkins Publishing Company and Clark Boardman Callahan) and are available through LEXIS, Westlaw, and Compuserve. For additional information, see 66 Fed. Reg. 7532, 7549 (January 23, 2001) or the FAA Civil Penalty web site listed above.

Macaulay's request for an enlargement of time in which to file the appeal brief is granted. The appeal brief was due to be filed on April 2, 2003. With the extension of time, Macaulay's appeal brief now is due to be filed no later than June 2, 2003.<sup>3</sup>

MARION C. BLAKEY, ADMINISTRATOR  
Federal Aviation Administration



VICKI S. LEEMON<sup>4</sup>  
Manager, Adjudication Branch

Issued this 15th day of May, 2003.

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<sup>3</sup> Counsel should be aware that the issue on appeal is whether Macaulay's failure to file an answer or a motion to dismiss in a timely manner should be excused. In other words, the issue is whether the ALJ properly construed Macaulay's silence as a constructive withdrawal of the request for a hearing or an admission of the complaint's allegations in the order assessing civil penalty. Whether Macaulay actually violated the regulations as alleged in the complaint is not at issue at this juncture in the proceedings.

<sup>4</sup> Issued under authority delegated to the Chief Counsel and the Assistant Chief Counsel for Litigation by Memorandum dated October 27, 1992, under 49 U.S.C. § 322(b) and 14 C.F.R. § 13.202 (*see* 57 Fed. Reg. 58,280 (1992)) and redelegated by the Assistant Chief Counsel for Litigation to the Manager, Adjudication Branch, by Memorandum dated August 6, 1993.